

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:04-CV-111-F(3)

BRENDA M. LOCKLEAR,)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
KECIA GAITHER, M.D.)	
Defendant.)	

This matter is before the court on Defendant Kecia Gaither's Motion to Tax Costs [DE-37]. Defendant seeks to tax costs against Plaintiff Brenda Locklear pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, or in the alternative, pursuant to Rule 68.

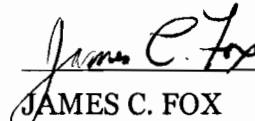
Rule 54(d)(1) provides, in part, the following: "Except when express provision therefor is made either in an statute of the United States or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs" FED. R. CIV. P. 54(d)(1). *See also* 28 U.S.C. § 1920 (defining what expenses may be taxed as costs). Judgment was entered in Defendant's favor on May 25, 2006. *See* Judgment [DE-36]. The submitted costs in this case total \$7,299.49, and consist of this court's filing fee when Defendant removed the case to this court (\$150.00); fees for copying and printing costs (\$4,868.49), and fees for deposition transcripts (\$2,281.00).

Barring a statutory provision to the contrary, Rule 54 creates a presumption in favor of awarding costs to a prevailing party. *See* FED. R. CIV. P. 54(d)(1); *Teague v. Bakker*, 35 F.3d 978, 996 (4th Cir. 1994). The complaint in this case contained allegations of medical malpractice, and there appears to be no specific statute addressing the assessment of costs in such cases. Having considered Defendant's motion to tax costs and affidavit and memoranda submitted therewith,

the court finds the costs to be reasonable. Therefore the motion to tax costs under Rule 54(d) [DE-37] is ALLOWED. Defendant's alternative motion to tax costs under Rule 68 is DENIED as moot. Plaintiff is ORDERED to pay the costs submitted by Defendant, totaling \$7,299.49.

SO ORDERED.

This the 27th day of September, 2007.



JAMES C. FOX
Senior United States District Judge